

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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Jason Baerga and Stacy Tolkin as mother and natural guardian
of infant plaintiff N.O.,

**STIPULATION OF
SETTLEMENT**

Plaintiffs,

13 CV 2678 (SET) (RML)

-against-

Police Officer John McHugh, Shield No. 2708; and John and
Jane Doe 1 through 10, individually and in their official
capacities (the names John and Jane Doe being fictitious, as
the true names are presently unknown),

Defendants.

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WHEREAS, plaintiffs commenced this action by filing a complaint on or about
May 2, 2013, alleging that the defendants violated plaintiffs' federal civil and state common law
rights; and

WHEREAS, defendant Officer John McHugh has denied any and all liability
arising out of plaintiffs' allegations; and

WHEREAS, the parties now desire to resolve the issues raised in this litigation,
without further proceedings and without admitting any fault or liability; and

WHEREAS, plaintiffs have authorized their counsel, Baree N. Fett, Esq., to
settle this matter on the terms set forth below; and

WHEREAS, plaintiff N. O. is an infant who brings this lawsuit by her mother,
Stacy Tolkin; and

WHEREAS, on or about January 21, 2014, this Court approved
plaintiffs' motion for an infant compromise;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by

and between the undersigned, as follows:

1. The above-referenced action is hereby dismissed against defendants, with prejudice, and without costs, expenses, or attorneys' fees except as specified in paragraph "2" below.

2. The City of New York hereby agrees to pay plaintiff Jason Baerga the sum of Thirty Thousand (\$30,000.00) Dollars and plaintiff N.O. an infant under the age of eighteen by her mother and natural guardian Stacy Tolkin, the sum Fifteen Thousand (\$15,000.00) Dollars in full satisfaction of all claims, including claims for costs, expenses and attorneys' fees. In consideration for the payment of these sums, plaintiffs agree to dismissal of all the claims against the defendants Police Officer John McHugh and the individuals sued herein as "John and Jane Does 1-10" and to release the defendant City of New York and any present or former employees and agents of the City of New York or any entity represented by the Office of the Corporation Counsel, from any and all liability, claims, or rights of action alleging a violation of plaintiffs' civil rights and any and all related state law claims, from the beginning of the world to the date of the General Release, including claims for costs, expenses, and attorneys' fees.

3. Plaintiffs each shall execute and deliver to defendant City of New York's attorney all documents necessary to effect this settlement, including, without limitation, a General Release based on the terms of paragraph 2 above and an Affidavit of Status of Liens. Prior to tendering the requisite documents to effect this settlement, Medicare-recipient plaintiffs must obtain and submit a final demand letter from Medicare for the reimbursement of any conditional payments made by Medicare for any injury or condition that is the subject of this

lawsuit. A Medicare Set-Aside Trust may also be required if future anticipated medical costs are found to be necessary pursuant to 42 U.S.C. § 1395y(b) and 42 C.F.R. §§ 411.22 through 411.26.

4. Settlement of this action is conditioned on compliance with the provisions set forth in Rule 83.2 of the Local Civil Rules of this Court ("Settlement of Actions by or on Behalf of Infants or Incompetents, Wrongful Death Actions, and Conscious Pain and Suffering Actions") and Rule 1207, *et seq.*, of the Civil Practice Law and Rules of the State of New York.

5. Nothing contained herein shall be deemed to be an admission by the defendant that he has in any manner or way violated plaintiffs' rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, or the City of New York or any other rules or regulations of any department or subdivision of the City of New York. This stipulation shall not be admissible in, nor is it related to, any other litigation or settlement negotiations, except to enforce the terms of this agreement.

6. Nothing contained herein shall be deemed to constitute a policy or practice of the City of New York or any agency thereof.

7. Plaintiffs agree to hold harmless defendants Police Officer John McHugh and there individuals sued herein as "John and Jane Does 1-10" regarding any liens or past and/or future Medicare payments, presently known or unknown, in connection with this matter. If conditional and/or future anticipated Medicare payments have not been satisfied, defendant and the City of New York reserve the right to issue a multiparty settlement check naming Medicare as a payee or to issue a check to Medicare directly based upon Medicare's final demand letter.

8. This Stipulation of Settlement contains all the terms and conditions agreed upon by the parties hereto, and no oral agreement entered into at any time nor any written

agreement entered into prior to the execution of this Stipulation of Settlement regarding the subject matter of the instant proceeding shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

Dated: New York, New York

December 4, 2013

January 22, 2014

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By: 
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City of New York
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New York, New York 10007

By: 
Melissa Wachs
Assistant Corporation Counsel

SO ORDERED:

s/RML

~~NON~~ ROBERT M. LEVY
UNITED STATES MAGISTRATE JUDGE

1/28/14